

UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DIRECTV, INC.,)	CIVIL ACTION NO. 3:04CV00055
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
BRIAN GALASSO,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

The plaintiff, DIRECTV, has moved for the entry of a default judgment against the defendant, Brian Galasso. Federal Rule of Civil Procedure 55 provides for default judgment when the clerk has first entered default against the party which has failed to appear and the court finds that the relief for which the plaintiff prays is warranted. On October 29, 2004, the clerk certified an entry of default against the defendant after confirming that the defendant had failed to answer or otherwise defend this action in a timely manner. After reviewing the materials submitted by the plaintiff in support of its motion for entry of default judgment, this court finds that the defendant is in default and that the plaintiff is entitled to judgment for the sum specified in the plaintiff's motion.

I. The Violations of Federal Communications Law

The plaintiff alleges that the defendant purchased and used three illegal devices

(“pirate access devices”) to intercept and decrypt DIRECTV’s protected satellite communications. The plaintiff became aware of the defendant’s purchases after obtaining the business records from several pirate access websites and stores. The Cable Communications Policy Act, 47 U.S.C. § 605, and the Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.*, provide this court with jurisdiction over this action and entitle the plaintiff to relief here.

The plaintiff asserts three specific claims against the defendant. In Count I, the plaintiff alleges that the defendant illegally, and without authorization, intercepted, received, and exhibited the satellite programming transmitted by DIRECTV in violation of 47 U.S.C. § 605(a). In Count 2, the plaintiff alleges that the defendant intentionally intercepted electronic communications from DIRECTV in violation of 18 U.S.C. § 2511. Finally, Count 3 alleges that the defendant knowingly manufactured, assembled, or modified an electronic, mechanical or other equipment knowing that the device is used primarily to facilitate unauthorized decryption of satellite programming. The plaintiff specifically alleges that the defendant modified said equipment when he actively programmed and reprogrammed DIRECTV access cards, and removed and inserted illegally programmed access cards into valid DIRECTV receivers, in order to access unauthorized programming, all in violation of 47 U.S.C. § 605(e)(4).

“The defendant, by his default, admits the plaintiff’s well pleaded allegations of fact. . . .” *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001) (internal citations omitted). So, in a default judgment action, a court must “determine whether the

well-pleaded allegations in [plaintiff's] complaint support the relief sought in this action.”

Id. In this case, the court finds that the allegations in DIRECTV's complaint support the legal conclusion that the defendant is liable to the plaintiff for relief under all three counts.

II. Damages, Injunctive Relief, and Attorney's Fees

Because the plaintiff has adequately alleged that the defendant violated sections 605(a) and (e)(4) of the Cable Communications Policy Act, 47 U.S.C. § 605, and the Electronic Communications Privacy Act, 18 U.S.C. § 2511, this court must determine the amount of damages that the plaintiff is due under these statutes.

For the defendant's violations of §§ 605(a) and (e)(4), the plaintiff may recover either:

(I) “the actual damages suffered by him as a result of the violation;” or

(II) “an award of statutory damages for each violation of subsection (a) . . . in a sum of not less than \$1,000 or more than \$10,000, as the court considers just, and for each violation of paragraph [e](4) . . . in a sum not less than \$10,000, or more than \$100,000, as the court considers just.”

47 U.S.C. § 605 (e)(3)(C)(i). The plaintiff has requested that it be awarded statutory damages in the amount of \$10,000 per violation for the defendant's violations of § 605(a), § 605(e)(4) and 18 U.S.C. § 2511 (discussed below). Each of the pirate access devices that the defendant modified constitutes a separate violation of § 605(e)(4). Therefore, the court awards the plaintiff statutory damages in the amount of \$10,000 for each of the defendant's three violations of § 605(e)(4), for a total award of \$30,000.

The defendant also violated the Electronic Communication Privacy Act, 18 U.S.C. § 2511. Title 18, United States Code, section 2520 provides a private right of action for senders of electronic transmissions to enforce civilly the provisions of § 2511 against the unlawful interceptors of those communications. Under 18 U.S.C. § 2520(c)(2), a court *may* assess damages for such violations in the amount of:

(A) the sum of the actual damages suffered by the plaintiff; or

(B) statutory damages of whichever is the greater of \$ 100 a day for each day of violation or \$ 10,000.

It is important to note, however, that a court has discretion about whether or not to award damages under this section. *See Nalley v. Nalley*, 53 F.3d 649, 651 (4th Cir. 1995) (“[W]e must read § 2520(c)(2) to embody a congressional intent to grant courts the discretion to decline to award damages. . . .”); *see also DIRECTV v. Borich*, Civ. Act. No. 1:03-2146, 2004 U.S. Dist. LEXIS 18899, at *15 (S.D. W.Va. Sept. 17, 2004). Because the defendant already must pay attorney’s fees (discussed below) and statutory damages for his violations of 47 U.S.C. § 605, the court declines to assess additional damages under 18 U.S.C. § 2520, especially since the damage is caused by the same underlying conduct.

The plaintiff has also requested injunctive relief to prevent any future violations by the defendant. Sections 2520(b) and 605(e)(3)(B) authorize a court to grant an injunction in order to prevent or restrain future violations. DIRECTV alleges that it will suffer irreparable harm without an injunction from this court. The court finds that injunctive relief is appropriate in these circumstances to prevent the defendant from continuing to

violate these statutes and harm the plaintiff.

Finally, the plaintiff has requested attorney's fees and related litigation expenses pursuant to § 2520(b) and § 605, in an amount totaling \$1,620.28. Section 605(e)(3)(B)(iii) states that a court "shall direct the recovery of full costs, including awarding reasonable attorneys' fees to an aggrieved party who prevails." The court has reviewed the plaintiff's attorney's fees and costs in this action and finds both the hours spent and the rate of compensation to be reasonable. Therefore, this court will award to the plaintiff its full amount of attorney's fees and costs associated with this action.

An appropriate order this day shall issue.

ENTERED:

Senior United States District Judge

Date

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DIRECTV, INC.,)	CIVIL ACTION NO. 3:04CV00055
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
BRIAN GALASSO,)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying memorandum opinion, it is accordingly
this day

ADJUDGED, ORDERED, and DECREED

as follows:

1. The plaintiff's Motion for Entry of Judgment by Default, filed January 17, 2005, shall be, and it hereby is, GRANTED;
2. The court enters default judgment against the defendant in the sum of \$30,000.00;
3. The court awards the plaintiff attorney's fees and costs in the amount of \$1,620.28; and
4. The plaintiff's request for an injunction is GRANTED, and the defendant is hereby permanently restrained and enjoined from: (1) possessing illegal access cards or other illegal devices or equipment; (2) intercepting, receiving, divulging, or displaying the plaintiff's satellite programming without prior written consent of the plaintiff; and (3) acting in further violation of 47 U.S.C.

§ 605 and 18 U.S.C. §§ 2511 and 2520.

The Clerk of the Court is hereby directed to strike this case from the docket of the court, and to send a certified copy of this order and the accompanying memorandum opinion to all counsel of record.

ENTERED: _____
Senior United States District Judge

Date